IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1055 of 1990
with
SPECIAL CRIMINAL APPLICATION NO.1063 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?NO

2 To be referred to the Reporter or not ?NO

3 Whether their Lordships wish to see the fair copy of the judgment ?NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?NO

5 Whether it is to be circulated to the civil judge ?NO

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SANJAY MOHANLAL AGARVAL - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR ARUN H MEHTA for Applicant(s) : 1,
MR PD BHATE APP for Respondent(s) : 1,
None for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 16/11/2005

COMMON ORAL JUDGMENT

1. By filing these petitions, the petitioner has prayed that the FIR at

Annexure "A" to the petition may be quashed and set aside. The petitioner is dealing in food-grains. The complaint has been filed against the petitioner by the Mamlatdar, Navsari Taluka before Navsari Police Station which is registered as C.R. No.161 of 1989. The said complaint is filed under Section 9 of the Essential Commodities Act 1955.

2. The allegation against the petitioner is that he is dealing in wheat and he has committed breach of Section 9 of the Essential Commodities Act and Gujarat Essential Articles Dealers (Regulation) Order 1977. The petitioner has challenged the aforesaid complaint on the ground that as per the notification dated 27-10-1986 which is issued under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981, in Schedule I, in Part I, under the heading "Foodstuffs", under the sub-heading "A. Foodgrains including products thereof" the entry, "(1) Wheat" is deleted, and therefore, the petitioner could not be prosecuted for the aforesaid offence. However at the time of hearing of this petition, it has been pointed out to the Court that petitioner has not been prosecuted for breach of aforesaid Order 1981 and he has been subjected to prosecute under different provisions i.e. under Gujarat Essential Articles Dealers (Regulation)

Order 1977 and not under the provisions of Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981.

3. Learned advocate Mr. Mehta has submitted that deletion of wheat can be construed even in connection with the aforesaid ordinance also. In my view, so far as notification dated 27-10-86 is concerned, it deals with Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. Therefore, it cannot be said that the complaint is required to be quashed. Under the circumstances, since the prosecution of the petitioner is under different provisions, the submission of learned advocate Mr. Mehta cannot be accepted However, if any defence is available to the petitioner, he can raise the same before the competent Court. Suffice it to say that this is not a complaint which is required to be quashed at the threshold in view of the fact that deletion of "wheat" from the heading "Foodstuffs" is under the provisions of different Order and the prosecution of the petitioner is under the provisions of different Order. Therefore, only on this point the petitions are required to be dismissed.

4. In the result, the petitions are dismissed. It is clarified that if any other points are available to the petitioner, he can raise the same in the pending case in accordance with law. Rule is discharged in both the

petitions. Interim relief, if any, stands vacated in both the petitions. No order as to costs.

(P.B.MAJMUDAR, J.)

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